

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTONIA HERNANDEZ,

Plaintiff,

v.

UNITED WIRE, METAL AND MACHINE
PENSION FUND, HARVEY MORGAN as the
ADMINISTRATOR of the UNITED WIRE,
METAL AND MACHINE PENSION FUND, and
the TRUSTEES of the UNITED WIRE, METAL
AND MACHINE PENSION FUND,

Defendants.
-----X

No. 08 Civ. 2507 (RMB/DCF)

ECF CASE

REPORT OF THE PARTIES' RULE 26(f) CONFERENCE

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, counsel for the parties met and conferred by telephone on April 28, 2008. The meeting was attended by Andrew W. Robertson on behalf of Plaintiff and by Russell L. Hirschhorn on behalf of Defendants.

I. INITIAL DISCLOSURES

The parties agree to exchange initial disclosures required by Rule 26(a)(1) on or before May 16, 2008.

II. DISCOVERY SCHEDULE

The parties jointly propose the following discovery in the event the Court permits any discovery pending the outcome of Defendants' contemplated motion to dismiss:

A. Interrogatories

The parties jointly propose that each side shall be entitled to serve on the other no more than 25 interrogatories pursuant to Rule 33. The parties shall serve any interrogatories no later than June 19, 2008, and the responding party shall have thirty days from service to respond thereto.

B. Document Requests

The parties jointly propose that any document requests be served in accordance with Rule 34. The parties shall serve any document requests no later than June 19, 2008, and the responding party shall have thirty days from service to respond thereto.

C. Depositions

The parties agree that any depositions taken in this action shall take place in accordance with the Federal Rules of Civil Procedure, including without limitation, Rule 30.

D. Requests for Admission

The parties jointly propose that each party shall be entitled to serve on the other no more

than 10 requests for admission pursuant to Rule 36. The parties shall serve any requests for admission no later than August 19, 2008, and the responding party shall have thirty days from service to respond thereto.

E. Fact Discovery Deadline

The parties shall complete all fact discovery no later than September 19, 2008.

F. Expert Discovery

The parties do not anticipate offering expert testimony or engaging in expert discovery, but they reserve the right to do so in the event a need for expert testimony arises due to unanticipated circumstances, events, or issues.

III. OTHER ISSUES

A. Subjects on Which Discovery May Be Needed

1. Plaintiff's Position

Plaintiff contends that discovery should be permitted with respect to the following issues, among others:

- (a) the relationships between and among the United Wire, Metal and Machine Pension Fund (the "Plan"), Teamsters Local 810 (the "Union"), and the employers who have entered into collective bargaining agreements with the Union, including with respect to the sharing of employment-related information;
- (b) the process by which the Plan accepts and processes applications for benefits, including the documents that are collected and reviewed by Plan representatives;
- (c) Juan Hernandez's ("Hernandez") application for benefits from the Plan in 1989, including the identity and knowledge of Plan representatives and third parties who were involved in the making and processing of the application, the steps taken by the Plan to confirm Hernandez's representations that he was unmarried, and the nature and contents of documents in the Plan's files that relate to Hernandez's application or the payment of pension benefits to him;
- (d) the Plan's and the Plan's Trustees' consideration of Plaintiff's claims for benefits in 2005, including any available records of the Trustees' deliberations with respect to Plaintiff's claim; and

- (e) Hernandez's death certificate, including the accuracy of the information therein and the reasonableness of the Plan's and the Plan's Trustees' reliance on the death certificate in connection with their denial of Plaintiff's claim for benefits.

2. Defendants' Position

Defendants contend that discovery should be limited to the administrative record.

B. Time to Join Other Parties

The parties propose that the deadline for any party to join another party to this action shall be May 12, 2008.

C. Time to Amend Pleadings

The parties propose that the deadline for Plaintiff to amend the Complaint shall be June 16, 2008.

D. Dispositive Motions

The parties propose that the deadline for the filing of any motion for summary judgment or other dispositive motion shall be October 30, 2008.

E. Trial and Pre-Trial Conferences

The parties propose that trial and any pre-trial conferences be scheduled for a date and time convenient for the Court.

Dated: New York, New York
May 5, 2008

Respectfully submitted,

**MILBANK, TWEED, HADLEY & McCLOY
LLP**

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